

Great Brit Geom  
Read 19 March 1766 in Lords

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Enacted 6 Geo. III. Private Acts, c 44.

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Vesting Part of the settled Estate of *John Silvester Smith*, Esquire, in Trustees, to be sold for discharging Incumbrances affecting the same.

Whereas by Indenture, *tripartite*, bearing Date the Sixteenth Day of June, One thousand Seven hundred and Twenty, and made or mentioned to be made between *John Silvester*, of Birthwaite in the County of York, Esquire; and *Sarah Sculthorpe*, Niece of the said *John Silvester*, of the first Part; *John Smith*, of Birthwaite aforesaid, Nephew of the said *John Silvester*, of the second Part; and *Thomas Gilbert*, Citizen and Dyer, of London, of the third

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Part;

Part; in consideration of a Marriage then intended, and afterwards had and solemnized, between the said *John Smith* and *Sarah Sculthorpe*, and for other Considerations therein mentioned, all that the Manor of *Newland* in the County of *York*, and the capital Messuage or Manor-House of *Newland*, and divers Messuages, Farms, Lands, Tenements and Hereditaments, situate, lying and being in the several Parishes, Fields, Hamlets, Precincts or Territories of *Newland*, *Altofts*, *Normanton* and *Woodhouse*, in the said County of *York*, therein particularly mentioned and described, were settled, limited and assured to and for the Use and Benefit of the said *John Smith* for his Life, and after his Decease to the Use of the said *Sarah Sculthorpe*, afterwards *Sarah Smith*, for her Life for her Jointure, and, after the Decease of the Survivor of them, to the Use of the first and every other Son between them Two to be begotten, successively, in Tail Male, Remainder, to the Daughter and Daughters of the same Marriage, as Tenants in Common, in Tail General, and in Default of such Issue, to the first and every other Son of the Body of the said *John Smith*, on the Body of any after-taken Wife to be begotten successively in Tail, with divers Remainders over:

**And whereas** the said *Sarah Smith*, formerly *Sarah Sculthorpe*, died in the Year One thousand Seven hundred and Twenty-five, without leaving any Issue; and the said *John Smith* afterwards intermarried with *Ann Hodgson*, Daughter of *Christopher Hodgson*, Gentleman:

**And whereas** the said *John Smith* made his last Will and Testament in Writing, bearing Date on or about the Fifth Day of July, One thousand Seven hundred and Forty-five; and thereby, after giving, devising and limiting several Annuities, or yearly Sums, unto or for the Benefit of the said *Anne* his Wife, for her Life, he gave and devised all his Manors, Messuages, Lands, Tenements and Hereditaments whatsoever and wheresoever (except such Messuages, Lands and Tenements as he therein after devised to *William Smith*, his second Son, in Manner therein mentioned) unto his Executors therein after named, their Executors, Administrators and Assigns, for the Term of Two hundred Years, upon Trust, by Sale or Mortgage of the Premises therein comprised, or any Part thereof, and by and out of the Rents and Profits of the same Premises, to raise such Sum or Sums of Money as, together with his personal Estate, should be sufficient to satisfy and discharge his Debts, Funeral Expences and Legacies, and to pay and apply such Money so to be raised, and his personal Estate accordingly; and from and after the End or other Determination of the said

said Term, unto *John Silvester Smith*, his eldest Son, for his Life, without Impeachment of Waste, with such Powers to make Leafes of the same Premises, and thereout to make Jointures to any Woman or Women that he should marry, and also to charge the Premises with raising Portions and Maintenance for his younger Children, in such Manner as is therein mentioned, Remainder to *John Smyth*, of *Heath* in the said County of *York*, Esquire, and his Heirs, during the Life of the said *John Silvester Smith*, in Trust, to preserve the contingent Remainders; and after the Death of the said *John Silvester Smith*, unto the first and every other Son of his Body lawfully begotten successively, in Tail Male, Remainder to *William Smith*, younger Son of the said Testator, for his Life, without Impeachment of Waste, with the like Powers to make Jointures and Leafes, and to raise Portions and Maintenance for his younger Children, and with the like Provision for preserving the contingent Remainders as aforesaid; and after his Death unto his first and every other son successively, in Tail Male, Remainder to the third, fourth, fifth, and all and every other Son and Sons of the Body of the said Testator, begotten or to be begotten successively, in Tail Male, Remainder to the Daughter and Daughters of the said *John Silvester Smith*, the Son, in equal Shares and Proportions, and as Tenants in common, if more than One, and the Heirs of the Body and Bodies of such Daughter and Daughters respectively, with Cross Remainders over, in case of the Death and Failure of Issue of any of the said Daughters, for the Benefit of the others and other of them, and the Heirs of her and their Body and Bodies respectively, Remainder to the Daughter and Daughters of the said *William Smith*, in equal Shares and Proportions as Tenants in common, if more than One; and the Heirs of the Body and Bodies of such Daughter and Daughters respectively, with the like Cross Remainders over as aforesaid; and in Default of such Issue unto the Daughters of the said Testator, in equal Shares and Proportions as Tenants in common, and the Heirs of their respective Bodies, with Cross Remainders over as afore-mentioned; and for want of such Issue, to the right Heirs of the said Testator for ever; and he did thereby will, require and direct, that his said Son *John Silvester Smith* should, within One Year after he attained his Age of Twenty-one Years, or come into the Possession or Receipt of the Rents and Profits of the Manors, Lands and Hereditaments comprised in the said first-mentioned Marriage-settlement, suffer a Recovery of the same Premises; and should within the same Time, by good Conveyances, settle and assure the same, to and for the Uses and Purposes to which he had, by his said Will, given and devised the same in Remainder, after the Determination of the said Term of Two hundred Years, or such of them as should be  
then

then subsisting, subject to such Powers as are therein before-mentioned; and in case his said Son should refuse, decline or neglect to do the same, within the Time thereby limited in that Behalf, then his Will was that all the Devises and Bequests thereby made or given, unto or in Favour of the said *John Silvester Smith*, and the Sons or Daughters of his Body, should cease, determine and become void, to all Intents and Purposes, as if the said *John Silvester Smith* was then dead without Issue; and he gave to his said Son *William Smith* One thousand Pounds, to be paid him when he should attain his Age of Twenty-two Years; and he gave to his Daughters, *Elizabeth*, *Mary* and *Sarah*, and to such other Daughters as he should have, Three thousand Pounds a-piece, to be paid them respectively at the Ages of Twenty-one Years, or Days of Marriage, which should first happen; and if any of them should die before their respective Legacies should become payable, he willed that such Legacy or Legacies, of her or them so dying, should go to his surviving Children (other than such of his Sons as, for the Time being, should be intitled to the Remainder of the said Manors and Premises, devised for the said Term of Two hundred Years next after the Determination of the said Term by virtue of his Will) at such Day or Days as the Daughter or Daughters so dying would, if living, have attained her or their respective Age or Ages of Twenty-one Years, equally amongst such surviving Children, Share and Share alike; and he willed his said Executors should pay to his said Daughters, until their respective Legacies of Three thousand Pounds each should become payable, the several annual Sums therein mentioned, for their Maintenance and Education, *videlicet*, till they should respectively attain the Age of Twelve Years, the Sum of Forty Pounds a-piece, and after their attaining that Age the Sum of Seventy Pounds a-piece, such annual Sums to be paid them respectively, at the Four usual Feasts or Days of Payment in the Year, by equal Portions, the first Payment to begin at such of the said Feasts as should first happen after his Decease; and after having given and disposed of several specifick and pecuniary Legacies to several Persons therein named, he gave and bequeathed all the Residue of his Personal Estate, subject to the Payment of Debts not charged on his Real Estate, and to his Legacies and Funeral Expences, to his Son *John Silvester Smith*; and he made, constituted and appointed *Christopher Hodgson*, Doctor in Physick, *John Smyth*, of *Heath* in the County of *York*, Esquire, *John Copley*, of *Wakefield*, Esquire, *George Walker* the Elder, of *Hunsfield* in the same County, Gentleman, and *George Walker* the Younger, his Son, Executors of his Will, and Guardians of all his Children, and of their respective Estates and Fortunes, during their Minority:

And

And whereas the said *John Smith* the Testator, died in or about the Month of *May*, One thousand Seven hundred and Forty-six, leaving Issue by the said *Ann Smith* his Wife, (who is since also dead) Five Children, *videlicet*, the said *John Silvester Smith* and *William Smith* his Two Sons, and Three Daughters, namely, *Elizabeth Smith*, late the Wife of *Robert Datway Haliday*, Esquire, and since deceased; *Mary Smith*, now Wife of *Nicholas Torre of Pontefract*, in the said County of *York*, Esquire; and *Sarah Smith* Spinster, then all Infants under the Age of Twenty-one Years: And upon the Death of the said *John Smith* the Testator, the Inheritance of the Manor, Lands, Tenements and Hereditaments, comprised in and entailed by the said recited Marriage Settlement, did, under the Limitations of the same Settlement, come unto and vest in the said *John Silvester Smith* his Son, as Tenant in Tail, with such Remainders over as are therein mentioned: And the other Manors, Lands, Tenements and Hereditaments, so given and devised by the said Will did subject to the Provision made for the said *Ann Smith* his Widow, since deceased, and to the said Term of Two Hundred Years limited to the said Executors by the same Will, and the Trusts declared thereof as aforesaid, belong unto and become vested in the said *John Silvester Smith* as Tenant for Life, with Remainder to Trustees, to preserve contingent Estates, Remainder to his First and every other Son lawfully to be begotten, successively in Tail Male, with such Remainders over as afore-mentioned:

And whereas, after the Death of the said *John Smith* the Testator, the said *John Smyth of Heath* proved his said Will in the proper Ecclesiastical Court; and the said *John Smyth, George Walker, Senior, and George Walker, Junior, and Christopher Hodgson*, did, as Executors of the said Testator and as Trustees for and Guardians of his Children, take Possession of his Personal Estate, and enter upon the Lands, Tenements and Hereditaments devised by the said Will, and applied the Rents, Profits and Produce of the said Real and Personal Estates promiscuously and indiscriminately, in, for or towards the Payment of the Debts and Legacies of the Testator, which in and by his said Will were directed to be paid, satisfied and discharged as aforesaid, and for the Maintenance of his Children, provided for, by and under the said Will:

And whereas the said *John Silvester Smith*, in the Year One thousand Seven hundred and Fifty-five, attained his Age of Twenty-one Years, and in compliance with and pursuance of the Desire and Request of the said *John Smith* his Father, expressed in his said Will, did in *Michaelmas Term* in the Thirty-second Year

of the Reign of his late Majesty King George the Second, suffer a common Recovery of the said Manor or Lordship of *Newland*, and all and every the Messuages, Lands, Tenements and Hereditaments, whereof he was Tenant in Tail under the Limitations of the said Marriage Settlement, wherein he the said *John Silvester Smith* was vouched to warranty; and thereby and by an Indenture dated the Twenty-sixth Day of July One thousand Seven hundred and Fifty-eight, and made between himself of the first Part, *Stafford Squire*, Gentleman, of the second Part, and *Christopher Hodgson* Doctor in Physick, and *William Serjeantson*, Esquire, of the third Part, and other Assurance in the Law, conveyed, settled and limited the same Manor or Lordship and Premises, to the Use of the said *John Silvester Smith*, for his Life, without Impeachment of waste, Remainder to the said *Christopher Hodgson* and *William Serjeantson* and their Heirs, during the Life of the said *John Silvester Smith* in trust, to preserve the contingent Remainders, and after his Death to the Use of the first and every other Son of his Body lawfully to be begotten successively in Tail Male, Remainder to the said *William Smith* for his Life without Impeachment of Waste, with the like Limitation to Trustees for preserving the contingent Remainders; and after his Death to the Use of his first and every other Son lawfully to be begotten successively in Tail Male, Remainder to the Use of all and every the Daughter and Daughters of the said *John Silvester Smith* lawfully to be begotten, to take as Tenants in common, and the Heirs of the Body and Bodies of such Daughter and Daughters, issuing with cross Remainder over in case of the Death and Failure of Issue of any of such Daughters for the Benefit of the others and other of them, and the Heirs of her and their respective Bodies; Remainder to the Use of all and every the Daughter and Daughters of the said *William Smith*, to be begotten as Tenants in common and the Heirs of their respective Bodies, with cross Remainders over as aforesaid; and in Default of such Issue, to the Use of the said *Elizabeth Haliday*, *Mary Torre*, and *Sarah Smith*, as Tenants in common and the Heirs of their respective Bodies, with such cross Remainders over as aforesaid; with the Remainder or Reversion in Fee Simple to the said *John Silvester Smith* and his Heirs:

**And whereas** the said *John Silvester Smith* afterwards exhibited a Bill in his Majesty's High Court of Chancery, against the said Executors, Guardians and Trustees, for an Account of the Real and Personal Estate and Effects of the said *John Smith* the Testator, entrusted with and vested in them as aforesaid, and to have his Debts, Legacies and Incumbrances paid and satisfied, and the Real Estate of the said *John Silvester Smith* the Son, exonerated, discharged, and

and disincumbered of and from the same: And by a Decree or Decretal Order of the said Court, made on the Thirteenth Day of April, One thousand Seven hundred and Sixty-one, in a Cause wherein the said *John Silvester Smith* was Plaintiff, and the said *Christopher Hodgson, John Smyth, and George Walker, Esquires, William Smith, Robert Dalway Haliday, and Elizabeth his Wife, Nicholas Torre and Mary his Wife, and Sarah Smith*, Defendants; after stating and setting forth the said Marriage Settlement and Will of the said *John Smith* the Testator, and the said common Recovery and Indenture of the Twenty-sixth Day of July, One thousand Seven hundred and Fifty-eight, suffered and executed by the said *John Silvester Smith* as aforesaid, it was ordered and decreed, That it should be referred to Mr. *Holford*, One of the Masters of the said Court, to take an Account of the Personal Estate of the said Testator come to the Hands of his Executors; and also of his Debts, Legacies and Funeral Expences, and that his Personal Estate should be applied in Payment thereof in a Course of Administration; and that the said Master should enquire when the Testator's Personal Estate, and the accumulated Rents and Profits were not sufficient to raise and pay the Portions devised to his younger Children, and then become payable; and that the said Master should take an Account of the Rents and Profits of the Estates comprised in the said Term of Two hundred Years received by the Defendants the Trustees to that Time, or by their Order or for their Use; and that the clear Surplus of the Testator's Personal Estate, and such Rents and Profits, should be applied as far as the same would go, in Payment of the said Debts, Funeral Expences, Legacies, Annuities, and Portions devised to the Testator's younger Children; and in case there should be a Deficiency, the Court reserved the Consideration of all further Directions until after the Master should have made his Report; and it was further ordered, that all Parties should be paid their Costs of the said Suit, to be taxed by the Master out of the Estates comprised in the said Term of Two Hundred Years:

And whereas the said Master made a Report in the said Cause, bearing Date the Fourteenth Day of May, One thousand Seven hundred and Sixty-three, (which was afterwards duly confirmed by Order of the said Court,) and thereby certified, that he had taken an Account of the Personal Estate of the said Testator *John Smith*, and also of the Rents and Profits of the Estates comprised in the said Term of Two Hundred Years received by the said Defendants, his Executors and Trustees, and with which they were to be charged, amounting together to Seventeen thousand Five hundred and Thirty-four Pounds, Five Shilling and Three Pence Half-penny;

penny ; and that he had also taken an Account of the said Testator's Debts, Funeral Expences and Legacies, and in order to see if any Debts remained unpaid, he had caused an Advertisement to be published in the Gazette for the Creditors of the said Testator, if any, to come in before him the said Master by a Time therein limited and since past, to prove their Debts, but that no Person had come in to prove any Debt due from the said Testator, the said Executors having paid all the said Debts which came to their Knowledge ; and that they had paid, laid out, expended and allowed in Payment of the said Testator's Debts, Funeral Expences, Annuities, Legacies, and the Maintenance of his Children, according to his Will, and for Taxes and Repairs, and other Outgoings relative to the said Trust Estate and Executorship, the Sum of Nineteen thousand Five hundred and Seventy-seven Pounds, Seven Shillings and Eight Pence Halfpenny ; and he further certified, that the said Executors and Trustees had paid to the said Defendant *Elizabeth Smith*, then *Haliday*, the Sum of Three thousand Pounds her Portion, devised by the said Will on her attaining the Age of Twenty-one Years, which was on the Twenty-eighth Day of *March*, One thousand Seven hundred and Fifty ; and that on the Marriage of the said Defendant *Mary Torre*, on the Twenty-second Day of *May*, One thousand Seven hundred and Fifty-one, they paid her said Portion of Three thousand Pounds given her by the said Will ; and that the Rents and Profits of the said Trust Estate were accounted for down to *Martinmas*, One thousand Seven hundred and Fifty ; so that when the said Defendants the Executors paid the said Defendant *Mary Torre* her Fortune, the Personal Estate of the said Testator, and the accumulated Rents and Profits of the said Trust Estate, were not sufficient to raise and pay the said younger Childrens Portions, which had then become payable by the said Sum of Two thousand and Forty-three Pounds, Two Shillings and Five Pence ; and the said Master further certified, that the said Legacy of Three thousand Pounds devised to the said Defendant *Sarah Smith*, became payable to her on the said Twenty-second Day of *July*, One thousand Seven hundred and Fifty-four, when she attained her said Age of Twenty-one Years ; and that the said Defendant *William Smith*'s Legacy of One thousand Pounds became payable to him on the said First Day of *July*, One thousand Seven hundred and Sixty, when he attained his said Age of Twenty-two Years, but that the said two last mentioned Legacies remained still unpaid ; and he also certified, that he had taxed the Costs of the several Parties to the said Suit, which were to be paid out of the Trust Estate at several Sums of Money therein mentioned, amounting together to the Sum

Sum of Three hundred and Fifty-two Pounds, Eleven Shillings and Seven Pence :

**A**nd whereas, by an Order made on the Eleventh Day of July, One thousand Seven hundred and Sixty-three, on the Master's Report, and for further Directions reserved by the Decree, it was ordered, that it should be referred to the said Master to take an Account of what was remaining due for Principal and Interest of the Portion of the said Defendant Mistress *Torre*, which had been paid by the said Defendants the Trustees on her said Marriage, out of the Estate of the Plaintiff *John Silverster Smith*; and also of what was due to the said Defendants *William Smith* and *Sarah Smith*, for their said Portions of One thousand Pounds and Three thousand Pounds respectively; and that what should be found due on the said Accounts should be raised by Sale or Mortgage out of the said Premises comprised in the said Trust Term of Two Hundred Years, and that out of the Money arising by such Sale or Mortgage, the Money that should be reported due for the said Defendants Mistress *Torre*'s Portion, should be paid to the said Plaintiff *John Silverster Smith*, and what should be reported due for the Portion of the said Defendants *William Smith* and *Sarah Smith*, should be paid to them respectively; and that the Master should tax all Parties their subsequent Costs, which were to be raised and paid in like Manner :

**A**nd whereas the said Master by his subsequent Report in the said Cause, bearing Date the Twentieth Day of *February*, One thousand Seven hundred and Sixty-four, certified, that there remained due for the Principal of the said Portion of the said *Mary Torre*, the Sum of Two thousand and Forty-three Pounds, Two Shillings and Five Pence; and that he had computed Interest for the said Two thousand and Forty-three Pounds, Two Shillings and Five Pence, remaining due for the Portion of the said *Mary Torre*, after the Rate of Four Pounds, Ten Shillings *per Centum per Annum*, from the said Twenty-second Day of *May*, One thousand Seven hundred and Fifty-one, to the said Twentieth Day of *February*, One thousand Seven hundred and Sixty-four, which amounted to One thousand One hundred and Sixty-eight Pounds, Nineteen Shillings and Ten Pence; and being added to the said Two thousand and Forty-three Pounds, Two Shillings and Five Pence, made together for Principal and Interest Three thousand Two hundred and Twelve Pounds, Two Shillings and Three Pence; and that he had computed Interest on the said One thousand Pounds, the Portion of the said *William Smith*, from the First Day of *July*, One thousand Seven hundred and Sixty,

when he attained his Age of Twenty-two Years, to the said Twentieth Day of *February*, One thousand Seven hundred and Sixty-four, which amounted to One hundred and Sixty-three Pounds, Fourteen Shillings and Three Pence; but the said Master certified, that it had been admitted before him, that the said *William Smith* had at different Times received Sixty-four Pounds, One Shilling and Seven Pence, which being deducted out of the said One hundred and Sixty-three Pounds, Fourteen Shillings and Three Pence, there remained due to the said Defendant *William Smith*, for the Interest of his said Portion, the Sum of Ninety-nine Pounds, Twelve Shillings and Eight Pence, which, as therein is mentioned, was to be paid by the said Plaintiff *John Silvester Smith*; and the Master further certified, that the said Three thousand Pounds, the Portion of the said *Sarah Smith*, was still due to her, and he had computed Interest on the said Three thousand Pounds, after the Rate aforesaid, from the Twenty-second Day of *July*, One thousand Seven hundred and Sixty-two (to which Time it was admitted before the said Master all Interest had been paid) to the said Twentieth Day of *February*, One thousand Seven hundred and Sixty-four, which amounted to the Sum of Two hundred and Nine Pounds, Three Shillings and One Penny, which the said Plaintiff was to pay, and that he had taxed the subsequent Costs of the several Parties therein named at several Sums of Money, amounting together to One hundred and Sixty Pounds, Six Shillings and Two Pence; and the said Master further certified, that the said Plaintiff having made a Proposal that the Sums of Three thousand Two hundred and Twelve Pounds, Two Shillings and Three Pence due to the Plaintiff, and the said One thousand Pounds and Three thousand Pounds due for the Portions of the Defendants *William* and *Sarah Smith*, together with the Costs of the several Parties taxed as aforesaid, and amounting together to Seven thousand Seven hundred and Twenty-five Pounds, should be raised by Mortgage of the Premises comprised in the said Term of Two hundred Years, he did approve that the said Sum of Seven thousand Seven hundred and Twenty-five Pounds should be raised by Mortgage of the said Premises comprised in the said Trust Term of Two hundred Years.

*And whereas*, by Indenture of Six Parts, bearing Date the Twentieth Day of *February*, One thousand Seven hundred and Sixty-four, and made or mentioned to be made between the said *Christopher Hodgson*, *John Smyth of Heath*, and *George Walker*, (the surviving Executors and Trustees of the said *John Smith* the Testator,) of the First Part; the said *John Silvester Smith* of the Second Part; the said *William Smith*, *Nicholas Torre* and *Mary his Wife*,

Wife, and *Sarah Smith*, of the Third Part; *Edward Woodcock*, of *Lincoln's-Inn*, in the County of *Middlesex*, Esquire, of the Fourth Part; *Joseph Lindley*, of *Heath* aforesaid, Gentleman, of the Fifth Part; and *Isaac Grant*, of *Symond's-Inn*, in the County of *Middlesex*, Gentleman, of the Sixth Part; after reciting or setting forth the said Will of the said *John Smith* the Testator, and the Decree, Order, Reports, and other Proceedings in the Court of Chancery herein before-mentioned and referred to, it is witnessed, that in Consideration of the Sum of Three thousand Two hundred and Twelve Pounds, Two Shillings and Three Pence therein mentioned, to be paid to the said *John Silvester Smith* by the said *Edward Woodcock*, in full Payment of what was reported due to him for the Money received by the said Trustees out of the proper Estate of the said *John Silvester Smith*, and paid by them for or towards Satisfaction of the Portion of the said *Mary Torre*, given to her by her said Father's Will, and Interest for the same; and of the Sum of Two hundred and Ninety-three Pounds, Nineteen Shillings and Seven Pence, paid to the said *John Silvester Smith*, for his Costs as Plaintiff in the said Suit; and of the Sum of One thousand Pounds paid to the said *William Smith*, in full of his Legacy given to him by his said Father's Will; and of the said Sum of Three thousand Pounds paid to the said *Sarah Smith*, in full of her Portion given by the said Will; and of the Sum of One hundred and Forty-two Pounds, Nine Shillings and Three Pence, therein mentioned to be paid to the said *Christopher Hodgson*, *John Smyth* and *George Walker*, in full Payment of the Costs of them and the other Defendants, except the said *Nicholas Torre*, and *Mary* his Wife; and of the farther Sum of Seventy-six Pounds, Eight Shillings and Eleven Pence, paid to the said *Nicholas Torre* and *Mary* his Wife, making together in the whole the Sum of Seven thousand, Seven hundred and Twenty-five Pounds, (and which are therein mentioned to be all the Debts, Annuities, Portions, Legacies and Costs then remaining unpaid and unsatisfied, which were a Charge on or did any ways affect the said Manors and Premises comprised in the said Trust Term of Two hundred Years,) they the said *Christopher Hodgson*, *John Smyth* and *George Walker*, in pursuance of the Trust reposed in them in and by the said Will, and in Obedience to the said Decree, Orders and Reports in the said Court of Chancery, and at the Request and by the Direction of the said *John Silvester Smith*, *William Smith*, *Sarah Smith* and *Nicholas Torre*, and *Mary* his Wife, did bargain, sell and assign unto the said *Edward Woodcock*, his Executors, Administrators and Assigns, all that the Manor or Lordship of *Birbwaite*, in the said County of *York*, with the Rights, Royalties, Members and Appurtenances thereto belonging

ing or appertaining; and also all that capital Messuage called *Birthwaite Hall*; and also all and every the Messuages, Lands, Tenements and Hereditaments late the Estate of the said Testator *John Smith*, situate, lying and being in the Parishes, Townships, Fields, Precincts or Territories of *Birthwaite, Darton, Kexborough, Swithin, Haigh, and High Hoyland*, in the said County of *York*, and therein particularly described, and therein mentioned to be Part of the several Manors, Messuages, Lands, Tenements and Hereditaments devised by the said Will of the said Testator therein named, with their and every of their Rights, Members and Appurtenances, to hold unto the said *Edward Woodcock*, his Executors, Administrators and assigns, from thenceforth for and during all the Residue and Remainder of the said Term of Two hundred Years; subject nevertheless to a Proviso or Agreement therein contained for Redemption of the said Premises upon Payment by the said *John Silvester Smith*, or any Person or Persons who should by virtue of or under the Limitations mentioned in the said Will of the said *John Smith* for the Time being be seised of or intitled to the said Manor and Premises, unto the said *Edward Woodcock*, his Executors, Administrators or Assigns, of the Sum of Seven thousand Seven hundred and Twenty-five Pounds of lawful Money of *Great Britain*, with Interest for the same, after the Rate of Five Pounds for every One hundred Pounds for a Year, at the Times and in the Manner therein mentioned:

**And whereas** the said Sum of Seven thousand Seven hundred and Twenty-five Pounds is still due and owing, and remains a Charge and Incumbrance upon Part of the Testamentary Estate of the said *John Smith* the Testator, and as the same is attended with the highest Rate of Interest, the Income of the said *John Silvester Smith* is by the Payment of the said Interest greatly lessened and reduced; and considering the great Disproportion between the Interest of the said Debt payable out of the Estate, and the yearly Rent of so much thereof as, if sold, would be sufficient to discharge the principal Sum, it would be greatly for the Benefit of the said *John Silvester Smith*, and all the Persons claiming under the said Will, that the said Incumbrances should be speedily paid off and discharged, and as the same cannot be raised under the Trusts of the said Term of Two hundred Years but with a great and manifest Disadvantage, it is proposed that the Fee-Simple and Inheritance of a competent Part of the said Estate should be appropriated and sold, and disposed of for that Purpose:

And

And whereas by an Agreement in Writing, bearing Date the Twentieth Day of July, One thousand Seven hundred and Sixty-four, signed by the said John Silvester Smith, and Thomas Cotton, of Haigh, in the Parish of Darton, in the said County of York, Esquire, the said John Silvester Smith, in Consideration of Seven thousand Seven hundred and Twenty-five Pounds, to be paid as therein after is mentioned, did covenant, promise and agree that he the said John Silvester Smith or his Heirs would, on or before the Nineteenth Day of July then next, by good Conveyances and Assurances in the Law, at the proper Costs and Charges of the said Thomas Cotton or his Heirs, convey and assure unto the said Thomas Cotton and his Heirs all that Messuage or Tenement situate and being at Nether Haigh, in the Parish of Darton, in the County of York, then in the Occupation of John Hemingway, Yeoman, his Assigns or Undertenants, and the Kiln, Barns, Stables, Outhouses, Buildings, Orchards, Gardens and Two Crofts thereto belonging, One of which was called the Plain; and also all those several Closes, or Parcels of inclosed Arable, Meadow and Pasture Ground to the said Messuage belonging, or therewith occupied, commonly called or known by the several Names of Hare Park, the Paddock, the Carr Ing, (thentofore divided into Two,) the Great otherwise Farr Cinderhill Field, the Little Cinderhill Field and the Syke Ing, (which Two last-mentioned Closes were then laid together in One Close, called the Near Cinderhill Field,) the Two High Field Closes, the Brigg Ing, the Great Bence Close, the Stony Croft, otherwise Laith Close, and the Narr Pasture, (which Two last-mentioned Closes were then laid together in One Close, called the Laith Close;) the Farr Pasture Close, and the Wheat Close, (then lying together in One Close, called the Farr Pasture,) the Owler Close, the Little Ing, the Near Dawkers and the Far Dawkers, (which Three last-mentioned Closes were then laid together in One Close, called the Dawkers;) the Cow Close, the Bottoms and Two little Closes, (which Three last-mentioned Closes were then laid together in One Close, called the Bottoms;) except all that Parcel of Ground, containing by Measure Six Acres and Two Roods, formerly Part of the said Close, but then separated or distinguished from the same by Rails or Stakes, and adjoining on or towards the East upon a Close called Walker Royd, and on or towards the West upon a Close called Near Siss Field, and on or towards the South upon Lands belonging to Thomas Beaumont, Esquire; which said excepted Parcel of Land was with all convenient Speed to be divided and fenced off from the Residue of the said Close called the Bottoms by a sufficient Stone Wall to be made, and ever afterwards to be maintained and kept up by and at the sole Expence and Charges of the said Thomas Cotton, his

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Heirs

Heirs and Assigns; and also One Rood of Land to be taken off from the East End of a Close called the *Farr Sij's Field*, lying within the said Parish of *Dartton*, then in the Occupation of *Thomas Ellis*, and to be separated and fenced off from the Residue of the said Close by a sufficient Stone Wall to be made and erected with all convenient Speed, and to be for ever afterwards repaired and kept up by and at the sole Expence and Charges of the said *Thomas Cotton* his Heirs and Assigns; and also all that Messuage situate at *Nether Haigh* aforesaid, and the Barns, Stables, Cottages, Blacksmith's Shop, and other Buildings, Folds and Yards thereto belonging, then in the Occupations of the said *John Hemingway* and *Joseph Hobson*, or their respective Undertenants; and also all those several Closes of Land thereunto belonging, commonly called the *Jebb Stubbing*, and the *Green Acres Close*, which last-mentioned Close was thentofore divided into Two; all which said Closes and Grounds are situate and lying in the said Parish of *Dartton*, and contain in the whole by Survey, exclusive of the said Six Acres and Two Rods excepted as aforesaid, One hundred and Seventy-seven Acres, Two Rods and Thirty Perches more or less, now in the Tenure or Occupation of the said *John Hemingway* or his Undertenants, at and under the yearly Rent of One hundred and Fifteen Pounds Ten Shillings, including the Rent of the said excepted Part of the Close called the *Bottoms*; and also all those several Closes and Parcels of Land, Arable, Meadow, and Pasture, commonly called or known by the several Names thereafter mentioned, that is to say, the *Little Bence*, the *Four Acres and an Half*, (thentofore Part of a Close, and then divided into Two, called the *Farr Thirteen Acres*,) the *Ing*, the *Green Acres*, the *Near Scrat Haigh Close*, the *Jebb Stubbing*, otherwise *Farr Scrat Haigh Close*, the *Dawkers* and *Two Banks Closes*, which Two last-mentioned Closes are situate in the Parish of *High Hoyland* aforesaid, and were theretofore divided into Three; all which Closes and Grounds last mentioned, except the *Two Banks Closes*, are situate and lying in the said Parish of *Dartton*, and contain together in the whole Thirty-nine Acres, Three Rods and Thirty-four Perches, be the same more or less, and then in the Occupation of the said *Joseph Hobson* his Assigns or Undertenants, at and under the yearly Rent of Twenty-two Pounds Eleven Shillings; and all that Messuage or Tenement situate, standing and being at *Nether Haigh* aforesaid, then in the Occupation of *Richard Johnson*, Husbandman, his Assigns or Undertenants, together with a Barn and all other Outhouses, Edifices, Buildings, Stables, Orchards, Gardens, Foldsteads and all other the Appurtenances to the said Messuage or Tenement belonging; and also all those several Closes and Parcels of Land, Arable, Meadow and Pasture, commonly

commonly called or known by the several Names thereafter mentioned, that is to say, the *Croft* divided into Two by the River *Derne*, the *Ing*, the *Near Coatbill Close*, the *Little*, otherwise *Farr Coatbill Close*, the *Near Thirteen Acres*, the *Three Acres*, One Rood and Seventeen Perches, (being another Part of the same Close, theretofore called the *Farr Thirteen Acres*,) the *Four Acre Close*, the *Wet Ing* and the *Ox Close*, together with the Soil of the *Spring Wood* growing at the Bottom or North-West End thereof, and which *Ox Close* and *Spring* are situate and lying in the Parish of *High Hoyland*, all which last-mentioned Closes and Grounds contain in the whole, by Survey, Forty-two Acres, One Rood and Ten Perches, be the same more or less, and were all, (except the said *Ox Close* and *Spring*) situate, lying and being in the Parish of *Dartton* aforesaid, and were then in the Occupation of the said *Richard Johnson* or his Undertenants, at and under the yearly Rent of Twenty-three Pounds Two Shillings, and all Outhouses, Edifices, Buildings, Gardens, Orchards, Yards, Foldsteads, Hedges, Ditches, Mounds, Fences, Trees, Woods, Underwoods, Ways, Paths, Passages, Waters, Watercourses, Commons, Commodities, Easements, Privileges and Appurtenances whatsoever to the said Messuages or Tenements, Lands, Hereditaments and Premises therein before-mentioned, belonging or in any-wise appertaining, or with the same or any of them used, held, occupied or enjoyed, or accepted, reputed, deemed, taken or known as Part, Parcel or Member thereof, or of any Part thereof; and also the Soil of all those several Spring Woods, or Parcels of Wood Ground, called by the several Names of *Haigh Gravé*, *Scrat Haigh* and the *Two Banks*, situate and being in the said Parishes of *Dartton* and *High Hoyland*, or One of them, and containing in the whole, by Survey, Fifty-two Acres, One Rood and Thirteen Perches, more or less; saving and excepting to the said *John Slivester Smith*, his Heirs and Assigns, all manner of Timber Trees and other Trees, Spring-wood and Underwood growing thereupon, or in any of the said Woods or Wood Grounds; and also in the said *Spring* called the *Ox Close Bottom*, with full Liberty and Authority to fell, sell, take, carry away and dispose of the same, to and for his and their own Use and Benefit for the next Fall only; and also the Soil of a Road or Way in the said Parish of *Dartton*, called the *Sheep Lane*, and leading from the Highway between *Wakefield* and *High Hoyland* into the Highway between *Barnsley* and *Huddersfield*, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of the same Premises, which said Premises therein mentioned and described were Part of the Premises comprised in the said recited Security; and it was thereby agreed, that the said Sum of Seven thousand Seven hundred and Twenty-five Pounds.

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the whole Price or Consideration-Money for the said Farms and Premises, should be paid by the said *Thomas Cotton* to the said *Edward Woodcock*, and that if any Interest should be then remaining due or accrued for the said principal Money, or any Part thereof, the same should be paid and cleared off by the said *John Silvester Smith*; and it was thereby declared and agreed, by and between the said Parties, that Application should be made to the then next Session of Parliament for an Act to confirm the said Articles, and to carry the same into Execution, as is therein mentioned:

And whereas the said Farms, Lands and Hereditaments so proposed to be sold and agreed to be purchased as aforesaid lie at a Distance from the Bulk of the Testator's Estate devised by his Will, and Part of the same Premises doth consist of Farms and Lands let at the yearly improved Rent of One hundred and Fifty-eight Pounds, subject to Taxes, and the rest of the said Premises consists of Woodland and Underwood, and doth not produce any certain annual Income, and while the same remains unsold and undisposed of, is of little or no Use or Value to the Persons intitled to the same respectively under the said Will; and in case the said Contract and Agreement for such Sale and Purchase as aforesaid could take Effect and be carried into Execution, the Estate of the said *John Smith* the Testator, devised by his Will for the Benefit of his Children as aforesaid, and which is now loaded with a Debt and Incumbrance of Seven thousand Seven hundred and Twenty-five Pounds, attended with the highest Rate of Interest, would be redeemed and discharged from the said Burden by parting with and disposing of an Estate of so small an Income, Value and Consequence to the Family, and thereby a manifest Advantage would result to the said *John Silvester Smith*, and all other Persons claiming under the said Will; But by reason of the Limitations contained in the said Will, and the Infancy of the eldest Son of the said *John Silvester Smith*, a good Title and Conveyance cannot be made to a Purchaser of the Premises so proposed to be sold without the Aid and Authority of an Act of Parliament;

Therefore your Majesty's most dutiful and loyal Subject the said *John Silvester Smith*,

Doth most humbly beseech your M A J E S T Y,

That it may be Enacted: And be it Enacted by the KING's Most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present

sent Parliament assembled, and by the Authority of the same, That all those Messuages, Farms, Lands, Tenements, Woods and Wood Grounds, Hereditaments and Premises in the said Parishes of *Darton* and *High Hoyland* respectively, which in and by the said Articles of Agreement of the Twentieth Day of *July*, One thousand Seven hundred and Sixty-four, were covenanted and agreed to be conveyed to the said *Thomas Cotton* and his Heirs, with their and every of their Rights, Royalties, Members and Appurtenance, shall from and after the Passing of this Act, be vested in and settled upon, and the same are hereby from thenceforth vested in and settled upon *William Barton Borwick*, of *Gray's-Inn*, in the County of *Middlesex*, Gentleman, and *Thomas Hodgson*, of *Cheapside*, in the City of *London*, Chinaman, their Heirs and Affigns, to the Use and Behoof of them the said *William Barton Borwick* and *Thomas Hodgson*, their Heirs and Affigns, for ever freed and discharged, and absolutely acquitted, exempted and exonerated of, from and against all and every the Uses, Trusts, Estates and Limitations, limited, created, provided and declared, of and concerning the same or any Part thereof, in and by the said Indenture, *Tripartite*, or Marriage Settlement, and the Will of the said *John Smith* herein before respectively recited or referred to, or either of them; but nevertheless upon the Trusts and to and for the Ends, Intents and Purposes herein after mentioned, expressed and declared; (that is to say) upon Trust and to the Intent and Purpose, that upon Payment by the said *Thomas Cotton*, his Heirs, Executors, Administrators or Affigns, unto the said *Edward Woodcock*, his Executors, Administrators or Affigns, of the Sum of Seven thousand Seven hundred and Twenty-five Pounds of lawful Money of *Great Britain*, being the Price or Consideration Money agreed to be paid for the Purchase of the Premises so contracted for as aforesaid; they the said *William Barton Borwick* and *Thomas Hodgson*, or the Survivor of them, or the Heirs of such Survivor, do and shall at the Costs and Charges of the said *Thomas Cotton*, his Heirs or Affigns, by such Conveyances and Assurances in the Law, as by him or them, or his or their Council learned in the Law, shall be reasonably devised, advised or required, grant, convey and assure the said Messuages, Farms, Lands, Tenements, Hereditaments and Premises hereby vested in them the said *William Barton Borwick* and *Thomas Hodgson* as aforesaid, with their and every of their Rights, Members and Appurtenances, unto and to the Use of the said *Thomas Cotton*, his Heirs and Affigns for ever, or to and for such Uses, Intents and Purposes as he or they shall in that Behalf order, direct and appoint.

**And it is hereby further Enacted and Declared,** That in the mean Time and until such Sale, Conveyance and Assurance shall be made and executed as aforesaid, the said *William Barton Borwick* and *Thomas Hodgson*, or the Survivor of them, or the Heirs of such Survivor, do and shall permit and suffer the Rents, Issues and Profits of the Premises hereby vested in them as aforesaid, to be had, received, taken and applied, by and for the Use and Benefit of such Person or Persons as would be intitled and ought to receive the same, in case this Act had not been made.

**And it is hereby also Enacted and Declared,** That upon Payment of the said Sum of Seven thousand Seven hundred and Twenty-five Pounds, and of all Interest due and owing for the same at the Time of Payment thereof, unto the said *Edward Woodcock*, his Executors, Administrators or Assigns, the several Mesuages, Farms, Lands, Tenements, Hereditaments and Premises comprised in the said Mortgage, and Security, may and shall at the Request of the said *John Silvester Smith* and *Thomas Cotton* respectively, be assigned, transferred and set over unto such Person or Persons as they respectively shall for that Purpose order, direct and appoint, for all the Residue and Remainder of the said Term of Two hundred Years, vested in the said *Edward Woodcock* by the said Mortgage as aforesaid, which shall be then to come and unexpired, upon the Trusts, and for the Purposes herein after-mentioned; that is to say, as to Premises so agreed to be purchased by, and sold to the said *Thomas Cotton* as aforesaid, in trust for him the said *Thomas Cotton*, his Heirs and Assigns, and to the Intent that the said Term may attend upon and be subservient to the Inheritance of the same Premises so purchased by him as aforesaid, in order to protect and defend the same from all Mesne and subsequent Incumbrances; and as to the Residue of the Premises comprised in the said Mortgage or Security in Trust, and to the Intent that the said Term of Two hundred Years, may attend upon and be subservient to the Inheritance of the same Premises, in order to protect and defend the same, from and against all Mesne and subsequent Incumbrances.

**Saving always to the KING's Most Excellent MAJESTY,** his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, his and their Heirs, Successors, Executors and Administrators (other than and except the said *John Silvester Smith* and *William Smith*, and their respective First and every other Son and Sons, and the Heirs Male of the several and

and respective Bodies of such Sons, and the Daughter and Daughters of the said *John Silvester Smith* and *William Smith* respectively, and the Heirs of the respective Bodies of such Daughter and Daughters, and the Daughter and Daughters of the said *John Smith* the Testator, and the Heirs of their respective Body and Bodies, and the Heirs of the said *John Smith* the Testator, and the several Trustees named in the said recited Will, either to preserve the contingent Remainders or to execute the Trusts of the Term, thereby limited their respective Heirs, Executors, Administrators and Assigns, and all and every other Person and Persons claiming or to claim, any Use, Trust, Estate, Right, Title, Interest, Portion, Sum or Sums of Money, Benefit or Advantage of, in, to or out of the said Messuages, Lands, Tenements, Hereditaments and Premises vested by this Act or any Part thereof, by Virtue of the said Will of the said *John Smith*) all such Estate, Right, Title, Interest, Property, Claim and Demand whatsoever, of, in, to or out of the same Messuages, Lands, Tenements, Hereditaments and Premises, or any Part or Parcel thereof, as they, every or any of them had before the Passing this Act, or could or might have had or enjoyed, or been entitled to if this Act had not been made.

A C T

E O R

Vesting Part of the settled  
Estate of *John Silvester*  
*Smith*, Esquire, in Trustees,  
to be sold for discharging  
Incumbrances affecting the  
fame.

